

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

September 13, 2021

FOR COMMISSION AGENDA

TO: The Commission

FROM: Kristy Nieto, Administrator
Tara Kiley, Deputy Administrator
Alyssa Kenney, Director of Digital Access
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Division of Digital Access, Consumer & Environmental Affairs

RE: FY 2022 Broadband Expansion Grants 5-BF-2022

Preliminary Discussion of Timeliness, Eligibility and Overall Priority of the American Rescue Plan Act (ARPA) Grant Applications Pursuant to Requirements of the U.S. Department of Treasury for Coronavirus State and Local Fiscal Recovery Funds

Suggested Minute: Timeliness -- The Commission found that the following grant applications [were filed after the deadline for submitting applications and excluded from further consideration for a grant award / were accepted as timely filed and included for consideration for a grant award]:

(# 142) Sheboygan County Economic Development Corporation Town of Mitchell project.

(# 143) Sheboygan County Economic Development Corporation Town of Plymouth project.

(# 145) Sheboygan County Economic Development Corporation Town of Rhine project.

(# 146) Sheboygan County Economic Development Corporation Town of Scott project.

(# 147) Sheboygan County Economic Development Corporation Town of Sherman project.

(# 242) Hillsboro Telephone Company Town of Elroy project.

or

The Commission took note of concerns regarding the grant applications, but found that it was not necessary to rule on the timeliness of those applications at this time.

Eligibility -- The Commission found that the following grant application(s) were ineligible for an ARPA grant award under the Treasury guidelines:

- (# 48) ComElec Services, Inc. Platteville East Side Fiber project.
- (# 72) Hillsboro Telephone Company, Inc. Village of Union Center project.
- (# 73) Hillsboro Telephone Company, Inc. Village of Wonewoc project.
- (# 100) City of Milwaukee Metro Milwaukee Connected project.
- (# 238) Wisconsin Telelift Inc. State-wide Dynamic Networking project.

or

The Commission took note of concerns regarding the eligibility of several grant applications, but found that it was not necessary to rule on the eligibility of those applications at this time.

Priority--Middle mile versus Last Mile Projects The Commission [directed/did not direct] staff to remove all middle mile proposals from consideration in the current proceeding as not responsive to the Treasury guidelines.

or

The Commission [directed/did not direct] staff to limit the number of recommended middle mile projects to no more than [2 - 4] proposals in the merit list for the merit phase of this proceeding.

and

The Commission [directed/did not direct] staff to investigate the topic of support and coordination for construction and use of middle mile routes, and prepare recommendations for the Commission.

Priority – Number of Awards per Provider The Commission [directed/did not direct] staff to limit the number of recommended grant awards to individual providers to no more than [2 - 3] recommended awards for each provider.

Priority – Other Considerations The Commission [directed/did not direct] staff to prepare a merit list reflecting the following considerations:

1. Geographic diversity among projects with otherwise identical merit scores.
- and/or
2. As many providers as possible among projects with otherwise identical merit scores.
- and/or
3. [A merit list/merit lists] giving priority to objectives identified by the Commission.

Introduction

In March 2021, the state received funding through the American Rescue Plan Act of 2021, PL 117-2 (March 11, 2021), amending Title VI of the Social Security Act (42 U.S.C. §§ 801 et seq.) by adding sections 602 and 603 to establish the Coronavirus State Recovery Fund and Coronavirus Local Fiscal Recovery Fund (ARPA). This legislation allocated funds to aid the state in its response to the COVID-19 emergency. On May 17, 2021, the U.S. Department of Treasury (Treasury) issued an interim final rule¹ which provides implementing guidance and regulations for use of the funds. The Treasury Department still has not issued a final rule. However, the Interim Final Rule currently has binding regulatory authority. Governor Evers determined to make \$100 million of this funding available for improvements to the broadband infrastructure pursuant to 42 U.S.C. § 802(c)(1)(D). On June 1, 2021, the Commission announced it would make the \$100 million available for broadband through a competitive grant proceeding.

The Commission received 242 grant applications (including six late-filed applications) requesting a total of \$440,519,692. The Commission provided a three-week period in which the public could object to one or more of the filed applications. On August 20, 2021, the Commission received objections from 15 parties raising a total of 148 objections to the proposed projects. The Commission provided applicants a one-week period to respond to objections. On August 27, 2021, the Commission received 35 responsive comments from 24 different parties.

¹ Interim Final Rule, Department of Treasury. "Coronavirus State and Local Fiscal Recovery Funds." 86 Fed. Reg. 26786 (May 17, 2021).

Because of the volume of applications, the discussion of the docket has been split into two parts. This first part, discussed in this memorandum, addresses certain threshold matters including the eligibility of the applications, and requests that the Commission provide direction on how it prefers the eligible applications be prioritized in the materials presented to the Commission. The second part, to be discussed in a subsequent memorandum, will discuss the relative merit of the eligible applications, and overlapping projects.

Eligibility

1. Timeliness.

The application instructions released by the Commission on June 1, 2021, stated that applications were due by 4:00 P.M. on July 27, 2021. Six applications were filed after this deadline. Five applications from Sheboygan County Economic Development Corporation were filed late in part due to a severe storm that interrupted internet service for a period of time on July 27.

1. (# 142) Sheboygan County Economic Development Corporation Town of Mitchell project. This application was filed at 9:01 a.m. on July 28, 2021.
2. (# 143) Sheboygan County Economic Development Corporation Town of Plymouth project. This application was filed at 4:14 p.m. on July 27, 2021.
3. (# 145) Sheboygan County Economic Development Corporation Town of Rhine project. This application was filed at 8:06 a.m. on July 28, 2021.
4. (# 146) Sheboygan County Economic Development Corporation Town of Scott project. This application was filed at 9:01 a.m. on July 28, 2021.
5. (# 147) Sheboygan County Economic Development Corporation Town of Sherman project. This application was filed at 8:06 a.m. on July 28, 2021.

One Hillsboro application was filed late because Hillsboro uploaded the application for the Town of Wonewoc project twice and failed to upload the Town of Elroy application.

6. (# 242) Hillsboro Telephone Company, Inc. Town of Elroy project. This application was filed at 3:44 p.m. on August 9, 2021.

The Commission is entitled to administer its filing deadline strictly and may decide to remove these applications from consideration. Moreover, the Commission received a large number of grant applications, many more than can be approved with the funds available. Accepting these late filings may have the unintended effect of elevating some of late applications over other timely filed applications on the merit list. On the other hand, the Commission may find these applications should be considered for a grant award, or may find that a determination regarding timeliness is not necessary at this time.

Commission Alternatives – Timeliness

Alternative One: The Commission found that the following grant applications were filed after the deadline for submitting applications and excluded those applications from further consideration for a grant award:

- (# 142) Sheboygan County Economic Development Corporation Town of Mitchell project.
- (# 143) Sheboygan County Economic Development Corporation Town of Plymouth project.
- (# 145) Sheboygan County Economic Development Corporation Town of Rhine project.
- (# 146) Sheboygan County Economic Development Corporation Town of Scott project.
- (# 147) Sheboygan County Economic Development Corporation Town of Sherman project.
- (# 242) Hillsboro Telephone Company, Inc. Town of Elroy project.

Alternative Two: The Commission found that the grant applications should be considered for a grant award.

Alternative Three: The Commission took note of concerns regarding the grant applications, but found that it was not necessary to rule on the timeliness at this time.

2. Eligibility Criteria in the Treasury Interim Final Rule.

The instructions and guidance issued by the Treasury to implement the provisions of ARPA applicable to the funding available under the current grant proceeding are found in the Interim Final Rule issued by the Treasury Department on May 17, 2021.² The Interim Final Rule contains two minimum requirements for all applications. The text of the Interim Final Rule is quoted below:

- a. Eligible Project Locations. “Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload ...” 86 Fed. Reg. 26786 at 26805.
- b. Minimum Speed. “Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps.” 86 Fed. Reg. 26786 at 16804.

However, clarifying regulatory guidance indicates some flexibility in administering the eligible project location requirement. The Treasury’s Frequently Asked Questions of July 19, 2021³, provides additional information regarding the unserved or underserved location requirement:

- Q: For broadband infrastructure to provide service to “unserved or underserved households or businesses,” must every house or business in the service area be unserved or unserved?

² Interim Final Rule, Department of Treasury, “Coronavirus State and Local Fiscal Recovery Funds,” 86 Fed. Reg. 26786 (May 17, 2021).

³ Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions, Department of Treasury, Question 6.8, (July 19, 2021): <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>

- A: No. It suffices that an objective of the project is to provide service to unserved or underserved households or businesses. Doing so may involve a holistic approach that provides service to a wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses within the service area economical. Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds.

Based on the Interim Final Rule and Treasury Frequently Asked Questions guidance, in general ARPA funds should be spent to improve broadband infrastructure service in areas that do not have a reliable wireline broadband service providing at least a 25/3 Mbps transmission speed. However, the Commission could approve a project that serves an area with some served locations. The Commission could find that a particular project has merit and would extend service to unserved locations that meets the minimum speed requirement, and also find that any served project locations in the project area are an indispensable part of the project, either because those locations make the project economically viable or because those locations cannot be easily severed from the rest of the project. The Commission also has flexibility to determine an application as ineligible because the project area is already served by at least one existing wireline broadband service providing a minimum speed of 25/3 Mbps.

Commission staff reviewed the applications and the objections to determine whether they addressed either of the eligibility requirements discussed above. Comments that did not address eligibility will be reviewed and discussed as part of the merit evaluation process. This includes objections to projects with some overlap with existing service that fall in the category of incidental or ancillary. The projects listed below appear to overlap served area to a significant degree.

(# 48) ComElec Services, Inc. Platteville East Side Fiber project. Astrea objects to this project ([PSC REF#: 419135](#)). It asserts that it provides a fiber service to businesses in this

project area that are west of the intersection of Highway 151 and Bus 151/County Road XX.

The broadband map indicates that CenturyLink provides a fiber to the premises (FTTP) service in the project area. The map does not indicate that Astrea provides service in the area. The Rural Digital Opportunity Fund (RDOF) auction excluded this project area from consideration (likely because the Federal Communications Commission (FCC) found the area had a minimum 25/3 Mbps service in at least a portion of the overlapping census blocks).

(# 72) Hillsboro Telephone Company, Inc. Village of Union Center project. Astrea objects to this project ([PSC REF#: 419138](#)). It asserts that it provides a fiber service in this project area with a speed up to 1000/10 Mbps. The broadband map indicates that Astrea provides a 500/50 service in the project area, and that CenturyLink provides a DSL service (albeit with a 20/2 Mbps advertised speed). The RDOF auction excluded this project area from consideration (likely because the FCC found the area had a minimum 25/3 Mbps service in the overlapping census blocks).

(# 73) Hillsboro Telephone Company, Inc. Village of Wonewoc project. Astrea objects to this project. ([PSC REF#: 419137](#)) It asserts that it provides a fiber service in this project area with a speed up to 1000/10 Mbps. The broadband map indicates that Astrea provides a 500/5 Mbps service in the project area, that CenturyLink provides a 60/5 Mbps DSL service, and Charter/Spectrum provides a cable service. The RDOF auction excluded this project area from consideration (likely because the FCC found the area had a minimum 25/3 Mbps service in the overlapping census blocks).

(# 100) City of Milwaukee Metro Milwaukee Connected project. Spectrum objects to this project ([PSC REF#: 419125](#)). AT&T provides a FTTP service with a speed of 1/1 Gbps in portions of Milwaukee County and a DSL service (at 12/0.5 Mbps) throughout the county.

Charter/Spectrum provides a cable service throughout the county as well. Milwaukee's application does not dispute that a reliable 25/3 wireline broadband service option exists for every location in the city. Rather Milwaukee asserts that the AT&T and Spectrum services are not affordable for a large segment of the city residents, and a wireless 5G and 4G small cell network operated by the non-profit, PCs for People, could provide an affordable alternative.

(# 238) Wisconsin Telelift Inc. State-wide Dynamic Networking project. Staff raised an objection to this project. This proposal appears to offer a network solution designed to meet emergency communications and first responder needs. It may work well in that context. The proposal certainly overlaps many served locations throughout the state. The project does not appear designed to deliver, upon project completion, a reliable 100/100 Mbps broadband service to specific unserved locations within the state. Moreover, it is difficult to evaluate the merit of this project against program objectives since the applicant has not indicated where the 85 devices will be deployed.

Commission Alternatives – Eligible Applications

Alternative One: The Commission found that (one or more of) the following grant applications were ineligible for an ARPA grant award under the Treasury guidelines:

- (# 48) ComElec Services, Inc. Platteville East Side Fiber project.
- (# 72) Hillsboro Telephone Company, Inc. Village of Union Center project.
- (# 73) Hillsboro Telephone Company, Inc. Village of Wonewoc project.
- (# 100) City of Milwaukee Metro Milwaukee Connected project.
- (# 238) Wisconsin Telelift Inc. State-wide Dynamic Networking project.

Alternative Two: The Commission took note of concerns regarding the eligibility of several grant applications, but found that it was not necessary to address the eligibility of these applications at this time.

Priority

The Commission received a large number of high quality applications. This has the effect of producing a large number of applications with high and nearly identical scores based on the criteria provided in the application instructions. It is common in the experience of the Commission that the demand for broadband grants far exceeds the available funding in a round, and that many applications are eligible, high quality, and meet most or all of the merit criteria. The Commission must then apply its discretion and special expertise on broadband expansion strategy and related policy matters in order to select the applications that best serve the public interest and actual current and future need in Wisconsin. This section of the memorandum requests that the Commission consider the relative priority of applications within this group of high scoring applications. The purpose of this section is for the Commission to provide any direction, as it sees fit, on how it prefers the eligible applications be prioritized in the merit analysis and materials to be presented to the Commission by staff in the second part of this proceeding, the Commission's discussion of merit and award decisions.

1. Middle Mile versus Last Mile.

The application instructions for this grant round reflect the priorities and preferences of the Treasury Department in the Interim Final Rule related to Coronavirus State and Local Fiscal Recovery Funds. The Interim Final Rule and applications instructions give priority to projects that include "last mile" connections, or projects that connect subscriber locations to fiber, cable or wireless network infrastructure.

Excerpt: To meet the immediate needs of unserved and underserved households and businesses, [ARPA fund] recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile connections. 86 Fed. Reg. 26786 at 26806.

The Commission received 42 applications from WIN, LLC and one application from CenturyLink, together totaling \$79,628,444, proposing to build middle mile fiber infrastructure. The Interim Final Rule uses the words, “encourages” and “prioritizing projects that achieve last mile connections.” The Commission could decide to prioritize applications under consideration that are responsive to priorities expressed by the Treasury in the Interim Final Rule. However, the Interim Final Rule language does not mandate that all projects must achieve last-mile connections, and the Commission could choose to consider middle mile projects.

The middle mile fiber routes proposed by WIN, LLC have a different purpose than the other last mile or fiber to the premise projects in this grant round. The middle mile projects would provide a robust fiber connection between the larger nation-wide internet system and local systems connecting individual subscribers. A middle mile project may strengthen an existing local internet system or it may be a critical component for future last mile projects. Middle mile connections can often be a choke point that limits the speed and capacity of services available at the local level. In the past, in its state-funded Broadband Expansion Grant Program, the Commission has approved grant projects for Bug Tussel Wireless / Hilbert Communications in Iowa, Green and Kewaunee Counties, and Norvado routes in Bayfield and Ashland Counties, specifically to improve the speed and capacity of the fiber backbone that connects local wireless towers and local internet service providers to the internet system.

There are other inter-city routes similar to those proposed by WIN. AT&T provides inter-city connections comparable to the routes WIN proposes. The AT&T routes are used to support the toll telecommunications system and the telecommunications signaling system that manages telephone traffic. AT&T and other interstate carriers continue to expand the capacity of

these networks. The Commission has pointed out in prior comments that getting broadband service to unserved areas requires the state to address the lack of funds, providers and fiber backbone that limit service availability in a given area. It is not exclusively the lack of middle mile facilities that limits service, it is also a matter of which providers have access to transit on those facilities. The WIN proposals could help alleviate one of the limiting factors hampering the growth of broadband service in some rural areas.

While staff point out these projects do not align with the Treasury Department's encouragement of ARPA recipients to focus on last-mile, it may be appropriate to point out the quality of many of these middle mile proposals. The three examples below are offered to show the potential of these middle mile routes, but several other equally valuable routes exist with the CenturyLink and WIN proposals:

Iron County. WIN proposes to build a fiber route east along Highway 2 from Ashland to Hurley and then south along Highway 51 to Mercer and Manitowish. (Project # 197) WIN proposes a second route east along Highway 182 from Park Falls to Manitowish and then south along Highway 47 through Lac du Flambeau to Woodruff. (Project # 221) Staff roughly estimates that 60% to 80% of all broadband service locations in Iron County would be located within 5 miles of one of these routes.

Vilas County. In addition to Project # 221 above, WIN also proposes to build a fiber route east along Highway 70 from Woodruff to Eagle River. (Project # 236) While the Commission has funded a number of grant projects in Vilas County, most of these projects have been located in the central part of the county near Eagle River. The Commission has never received a grant application proposing to connect service locations in the Towns of Lac du Flambeau or Arbor Vitae. These two routes could reduce the cost of last mile fiber projects

in those towns for WIN member companies. The routes WIN proposes to build between Eagle River and Tipler and Crandon on the east side of the county could have a similar impact.

Fond du Lac and Sheboygan Counties. WIN proposes to build a fiber route from Lomira in Dodge County east along Highway 67 through Campbellsport and the northern portion of the Kettle Moraine area to Plymouth and east along Highway 23 to Sheboygan. Near Sheboygan, this route would overlap the fiber routes of other providers, including one Commission-awarded broadband expansion grant project with Nsight Telservices near Sheboygan Falls. But this route would build fiber into rural areas of Fond du Lac and Sheboygan Counties where the Commission has only received fixed wireless proposals in the past (not including the fiber proposals submitted in this ARPA grant round).

However, there are some questions and issues that the Commission may wish to consider in addition to the obvious question of funding. WIN is not clear in its applications which internet service providers would have access to the WIN routes. In some instances, telecommunications that are not WIN members may be limited from accessing the routes. In the present docket, WIN identifies the local internet service provider it is working with for some of the proposed routes. For example, application for the route from Ashland through Iron County lists Norvado as an application partner. In other applications, WIN merely states that the local partner is to be determined. If the state is contributing 75 to 80 percent of the total cost of the route, what might the state receive in return in terms of provider access to the fiber resource, and what limits or restrictions would the provider or owner apply to fiber availability? Should the Commission consider or impose its own requirements on the fiber routes, and should those requirements be set forth in a Commission order, grant agreement or a lease agreement? Should the Commission consider the size or number of fibers in the route,

and should the Commission entertain requests from the Wisconsin Departments of Transportation (DOT) and Military Affairs (DMA), and county governments for use of fiber capacity for emergency communications? Should the Commission consider how to leverage state funded middle mile facilities to meet broader goals related to state-wide broadband access?

Commission Alternatives – Priority--Middle mile versus Last Mile

Alternative One: The Commission directed staff to remove all middle mile proposals from consideration in the current proceeding as not responsive to the Treasury guidelines in the Interim Final Rule.

Alternative Two: The Commission directed staff to limit the number of recommended middle mile projects to no more than [2-4] proposals in the merit list for the merit phase of this proceeding.

Alternative Three: The Commission did not direct staff to remove from consideration or limit the number of middle mile projects in the merit list.

In addition to selecting an alternative related to considering middle mile projects in this proceeding, the Commission may or may not wish to direct staff to provide it with general informational recommendations regarding coordinating and maximizing the impact of funding for middle mile projects, by selecting one of the sub-alternatives below.

Sub Alternative A: The Commission directed staff to investigate the topic of support and coordination for construction and use of middle mile routes, and prepare informational recommendations for the Commission.

Sub Alternative B: The Commission did not direct staff to investigate the topic of support and coordination for construction and use of middle mile routes, and prepare informational recommendations for the Commission.

2. Number of Awards per Provider.

Another priority question for the Commission's consideration is related to the distribution of awards across a broader or narrower group of providers. This question becomes germane, for instance, when considering the list of projects proposing to build broadband networks owned, operated by, or affiliated with local governments, non-profits and co-operatives. Ownership and affiliations is a merit review scoring element based on guidance from the Interim Final Rule.

Excerpt: Treasury also encourages [ARPA fund] recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities. 86 Fed. Reg. 26786 at 26806.

The applications receiving full credit for proposing a broadband network that will be owned, operated by, or affiliated with local governments, non-profits, co-operatives are listed below. There are also a number of other projects that will receive partial credit for this element based on partnerships with local and county governments. A preliminary review of the applications by staff indicates that 62 applications would receive full credit for this Treasury preference. In total, this list of 62 applications proposing to build a broadband network owned, operated by, or affiliated with a local government, non-profits or co-operative requests a total of \$113,616,882:

1. 24-7 Telcom (the CLEC affiliate of West Wisconsin Telecommunications Co-Operative). 12 applications requesting a total of \$13,272,385.
2. Cochrane Cooperative Telephone Company. 1 application requesting \$2,100,000.
3. La Valle Telephone Cooperative. 3 applications requesting a total of \$2,430,250.
4. Town of Liberty Grove (Door County). 1 application requesting \$318,500.

5. Marquette-Adams Telephone Cooperative, Inc. 7 applications requesting a total of \$6,962,510.
6. Chibardun Telephone Cooperative, Inc. d/b/a Mosaic Technologies. 6 applications requesting a total of \$23,995,322.
7. City of Milwaukee. 1 application requesting \$12,520,549
8. Norvado (an affiliate of Chequamegon Communications Cooperative, Inc.). 5 applications requesting a total of \$3,857,139.
9. Nelson Communications Cooperative d/b/a Ntec. 1 application requesting \$1,585,200.
10. Ntera, LLC (a joint venture of Citizens Telephone Cooperative and Chippewa Valley Electric Cooperative). 3 applications requesting a total of \$2,175,053.
11. Pierce Pepin Cooperative Services. 9 applications requesting a total of \$6,729,681.
12. Reedsburg Utility Commission d/b/a Lightspeed. 4 applications requesting a total of \$11,745,000.
13. Richland-Grant Telephone Cooperative. 1 application requesting \$2,364,000.
14. City of St. Croix Falls. 1 application requesting \$25,000.
15. School District of Ft. Atkinson. 1 application requesting \$5,992,186.
16. Superior Connections (an enterprise of the Bad River Band of Lake Superior Tribe of Chippewa Indians). 1 application requesting \$6,041,269.
17. Tri-County Communications Cooperative, Inc. 2 applications requesting a total of \$3,315,000.
18. Vernon Communications Cooperative. 2 applications requesting a total of \$7,127,660.
19. Washington Island Electric Cooperative. 1 application requesting \$1,060,178.

Based on the applications that were submitted, this scoring element would result in staff presenting materials proposing to concentrate the funds with a smaller number of providers, the majority of which are located on the west side of the state (where the co-operatives are located for the most part). The Commission may wish to instruct staff that for the purposes of prioritizing materials for the Commission's discussion, no more than two to three applications could be approved for each provider in this proceeding (counting each holding company or corporate entity, such as TDS Telecom, as one provider). A two or three award limit per provider could be a useful approach should the Commission wish to allocate funding to a broader number of applicants.

Commission Alternatives – Priority—Number of Awards per Provider

Alternative One: The Commission directed staff to limit the number of recommended grant awards to individual providers to no more than [2 – 3] recommended awards for each provider.

Alternative Two: The Commission did not direct staff to limit the number of recommended grant awards to individual providers to no more than a set number recommended awards for each provider.

3. Other Considerations.

If the Commission elects to limit the number of grant awards that one provider may receive, then the next question is whether the Commission wishes for the remaining grant proposals to be organized based on any other strategic priorities. Staff note that clearly, giving priority to the most viable and beneficial projects that target areas of greatest need is ultimately the approach that underlies and is embedded in the objectives and criteria of the program.

In order to further refine its direction to staff regarding how the materials are presented, one option would be to direct staff to present a proposed merit list that gives priority to projects that serve as many counties as possible (geographic diversity). A second option would be to direct staff to present a proposed merit list that prioritizes awarding grant funds to as many providers as possible (provider diversity). A Commission decision to limit the number of awards per provider, as laid out in the previous section of this memorandum, would lead to greater provider diversity. The alternative below to direct staff to further focus on provider diversity would be an additional step in that direction – after creating a proposed merit list with a limit on the number of projects per provider, that list would still contain more

viable projects than available funds. Staff could further sort that list by recommending projects that are associated with a broader variety of providers, where all other Commission strategic priorities and scoring factors are generally equal.

Alternatively, the Commission may find it is not necessary to firmly decide these questions of priority at this time. Staff can develop multiple versions of a merit list and show how different assumptions would affect the ultimate choice of projects. The goal is not to limit the Commission's discussion but to focus the discussion upon a few options that are thought to be the most beneficial and reflect the Commission's goals for the funding. Staff note that the merit discussion in the second part of this docket will include a discussion of overlapping projects. The size of this grant round has increased the number of competing providers requesting an exclusive opportunity to build out their projects in a given area. This will require the Commission to select one project in an area over the objections of other competing providers, and a merit list or lists that reflect the Commission's priorities might be helpful in that area of the discussion as well. It is also of note that additional funds for broadband expansion have been made available in the 2021-23 Biennial Budget in a total amount of \$129 million for the biennium.

Commission Alternatives – Other Considerations

Alternative One: The Commission directed staff to prepare a merit list reflecting one or both of the following considerations:

Sub Alternative A. Geographic diversity among projects with otherwise identical merit scores.

Sub Alternative B. As many providers as possible among projects with otherwise identical merit scores.

Alternative Two: The Commission did not direct staff to reflect other considerations in the merit list.

Alternative Three: The Commission directed staff to prepare merit list(s) per the discussion.

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Key Background Documents

1. Interim Final Rule ([DL: 1830200](#))